

## **POST-GOVERNMENT EMPLOYMENT RESTRICTIONS** **(Enlisted Personnel)**

Since you are leaving the Department of Defense, you should be aware of several statutory and regulatory prohibitions that restrict certain post-government employment.

### **SEARCHING FOR A JOB**

DOD Joint Ethics Regulation (JER), DOD 5500.7R, at 1-300 provides that An enlisted member shall not participate **personally and substantially** as part of his DOD duties in any particular matter in which he, his spouse, minor child, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.≡ Also, enlisted personnel are prohibited from accepting compensation from any entity other than the federal government for services to the federal government.

### **PROCUREMENT INTEGRITY ACT**

The Procurement Integrity Act 41 U.S.C 3423, restricts job searching activities and post-government opportunities.

#### **Contacts by Offerors regarding Non-Federal Employment**

Section (c) of the Act requires an agency official who is personally and substantially participating in an agency procurement (Aexcept for contracts under the Aimplified acquisition threshold≡) and who contacts, or is contacted by, a bidder or offeror in that competitive procurement regarding possible non-Federal employment for that official to:

(A) promptly report the contact in writing to the official's supervisor and to the agency Designated Agency Ethics Official DAEO (or designee) and

(B) either reject the possibility of non-Federal employment; or immediately disqualify himself/herself from further personal and substantial participation in the procurement until such times the agency has authorized the official requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that--

- (1) the person is no longer a bidder or offeror in the Federal agency procurement;  
or
- (2) all discussions with the bidder or offeror regarding possible non-Federal terminated without an agreement or arrangement for employment.

Agencies are required to retain such reports of contacts for two years. Officials who fail to file the report can face civil penalties of up to \$50,000.00 plus twice the compensation received or offered. Further, bidders or offerors who engage in employment discussions with an official who has not filed the required notice can face civil penalties of up to \$500,000.00 plus twice the compensation paid or offered.

## **Compensation from Contractor**

Section (d) of the Act bars a former Federal official from accepting **compensation**<sup>5</sup> from a contractor as an employee, officer, director, or consultant **for one year** if the employee served in **certain positions**; on contracts that were awarded in excess of ten million or if the employee personally made **certain decisions**<sup>1</sup> valued in excess of ten million.

However, the Act provides that an employee may accept compensation from a division or affiliate of the prohibited contractor if the affiliate or division does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract in issue. See 41 U.S.C. 423(d)(2). Violations of this section carry the same civil and administrative penalties described above and apply to both former officials and contractors.

## **Protected Procurement Information**

The Act prohibits present and former U.S. officials (includes members of the Armed Forces) from disclosing contractor bid or **proposal information** or source selection information before the award of a Federal agency procurement contract. The Act also prohibits other individuals from obtaining such information before the award of a Federal agency procurement contract. Criminal, civil, and administrative penalties may apply for violations.

## **INSIDE INFORMATION**

The JER prohibits Federal employees from using nonpublic information to further their own private interests or those of another, whether through action, advice, or recommendation. Non-public information includes information the employee knows or reasonably should know has not been made available to the general public, e.g., that which is exempt from disclosure under the Freedom of Information Act or otherwise protected from disclosure by law or regulation. Therefore, while you can capitalize on your professional skills and knowledge, you can not use nonpublic information to do so.

## **TERMINAL LEAVE**

If there is no bar to your employment with a specific defense contractor, generally speaking, you may begin working for, and receive compensation from, a defense contractor while you are on terminal leave. However, because you are still technically in the military while on terminal leave, the following restriction applies:

Filers of the financial disclosure report OGE-450, must obtain written permission from your AAgency Designee≡ before you begin employment with a defense contractor or other Aprohibited source.≡ Your

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Agency Designee is your first supervisor in the chain of command who is a commissioned military officer or civilian above GS/GM-11.

Unless assigned to a remote location, the Agency Designee must consult with the applicable ethics counselor when considering your request.

## **ACCEPTING EMPLOYMENT FOR A FOREIGN GOVERNMENT OR ENTITY**

Accepting employment as an agent for a foreign government, while in a terminal leave or retired status, requires Secretary of the Navy and Secretary of State consent. Failure to obtain this consent may result in the withholding of your retired pay. The term Aforeign government≡ may also include foreign corporations, businesses, universities, or other entities owned, operated, or controlled by a foreign government. Additionally, a former member desiring employment with a foreign government or any foreign business interest may also be required to file with the Attorney General as an agent of a foreign principal.

## **EMPLOYMENT IN DOD**

To avoid appearances of favoritism or preferential treatment, 5 U.S.C. § 3326 prohibits the appointment of a retired member of the Armed Forces to a civil service position (including a nonappropriated fund activity) in DOD or a component thereof for 180 days after retirement unless:

- a) the appointment is approved by the Secretary concerned or his designee;
- b) the retiree is appointed to a position for which the basic rate of pay has been increased under 5 U.S.C. § 5303 (authorizing special pay for positions for which the recruitment efforts are significantly handicapped) ; or
- c) a state of national emergency exists.

In addition, prior to Secretarial approval of any such appointment actions must be taken to ensure that:

- a) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;
- b) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give candidates an opportunity to apply;
- c) qualification requirements for the position have not been written in a manner designed to give advantage to the former member; and
- d) the position has not been held open pending the retirement of the former member.

The above statute has been implemented in the Department of Defense by DODDIR 1402.1 of January 21, 1982, Employment of Retired Members of the Armed Forces. Under this directive, the Secretary may not approve such an appointment unless the appointment is to a position for which:

a) equally well-qualified personnel are not available among those required to be considered under applicable in-service placement and promotion procedures;

b) employee candidates are not available among those required to be considered in priority placement programs or among those on applicable reemployment priority lists or under the OPM Displaced Employee Program; and

c) intensive external recruitment efforts have failed to produce any better qualified candidates.

In the Navy, the hiring activity or servicing personnel office prepare the waiver requests. The approval authority for waivers for positions GS-8 or higher rests within the Office of the Assistant Secretary of the Navy for Manpower and Reserve Affairs (Director, Program Development and Direction Division, Deputy Assistant, Secretary of the Navy, Civilian Personnel Policy/Equal Employment Opportunity). For positions GS-7 and below, requests may be approved by regional personnel offices. Nonappropriated fund activities have authority to approve their own requests.

- o Personally and substantially** to participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. To participate may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement of an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the series of peripheral involvements. A single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.
- 2 Compensation** is defined as ...wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, **specifically in exchange for services provided by the individual.**
- 3 Certain positions include:**
1. Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000 ;and
  2. Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor.
- 4 Certain decisions** include:
1. A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor.
  2. A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;
  3. A decision to approve issuance of a contract payment or payment or payments in excess of \$10,000,000 to that contractor; or
  4. A decision to pay or settle a claim in excess of \$10,000,000 with that contractor. See 41
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U.S.C. 423(d)(1)